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Lilith Games (Shanghai) Co. Ltd.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Lilith Games (Shanghai) Co. Ltd.,
Plaintiff,
v.
uCool, Inc. and uCool Ltd.,
Defendants.

Case No. 3:15-cv-1267

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff, Lilith Games (Shanghai) Co. Ltd. (“Lilith”), files this Complaint for Copyright
2 Infringement (the “Complaint”) and respectfully alleges as follows:

3 **I. Introduction**

4 1. Under 17 U.S.C. § 101, *et seq.* (the “Copyright Act”), and specifically, 17 U.S.C.
5 § 501, a party is liable for copyright infringement if it has violated any of the exclusive rights of a
6 copyright owner, including the rights to reproduce, create derivative works from, and distribute
7 copies of a work protected by a valid copyright. In February 2014, Lilith released in China an
8 originally developed game titled “Dao Ta Chuan Qi,” which means “the legend of sword and tower”
9 (“Sword and Tower”). Lilith owns the copyrights in, and has Chinese copyright registrations for, the
10 artistic design and expression of more than 102 characters in Sword and Tower. Lilith also owns the
11 copyrights in the pictorial and graphic works in the screen images and the user interfaces expressed
12 in Sword and Tower. Moreover, Lilith owns the copyrights in, and has Chinese copyright
13 registrations for, Sword and Tower’s computer software. All of these copyrighted works were
14 created at considerable time, expense, and effort on Lilith’s part. Sword and Tower was first
15 published outside the United States.

16 2. uCool, Inc. and uCool Ltd. (collectively “uCool”) has improperly received the benefit
17 of Lilith’s efforts by infringing Lilith’s copyrights in each of the aforementioned works. Following
18 publication, Sword and Tower was generally commercially available to the public, and it was
19 accessible by uCool. After uCool had access to Lilith’s copyrighted works embodied in Sword and
20 Tower, uCool released a game called Heroes Charge in August 2014. In Heroes Charge, uCool
21 copied, without authorization, every aspect of Sword and Tower, including the expressions that are
22 protected by Lilith’s valid copyrights. Indeed, uCool copied the computer software of Sword and
23 Tower and incorporated it into Heroes Charge. Heroes Charge has been offered and distributed by
24 uCool in the United States.

25 3. Because of uCool’s unlawful copying of Lilith’s protected, copyrighted works, uCool
26 is liable for direct copyright infringement. As a result, Lilith requests that uCool be enjoined from
27 any further copyright infringement, and that Lilith be appropriately compensated for the damages
28 caused by uCool’s actions.

II. Jurisdiction and Venue

4. Because this lawsuit is being brought pursuant to 17 U.S.C. § 101, *et seq.*, this Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

5. This Court also has personal jurisdiction over uCool because it is based in Menlo Park, California. The majority, if not all, of its top-ranking executives and employees work and reside in California, including the producer of the infringing game Heroes Charge. Indeed, because the acts giving rise to this Complaint occurred in California, and because uCool regularly and systematically conducts business in this State, uCool is subject to both specific and general personal jurisdiction in this Court.

6. Venue is also proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b) and 1400(a). For example, uCool unquestionably resides in this district for purposes of determining venue, and a substantial part of the events giving rise to this Complaint were intentionally committed by uCool in the Northern District of California.

III. Intradistrict Assignment

7. This matter should be assigned to the San Francisco Division of the United States District Court for the Northern District of California because uCool is based in and a substantial portion of the events giving rise to this action occurred in San Mateo County, California. *See* Civil L.R. 3-2(d).

III. The Parties

8. Lilith is a leading mobile game developer based in Shanghai, China. As noted above, Lilith released Sword and Tower in China in February 2014.

9. uCool is based in Menlo Park, California, and can be served through its registered agent Corporation Service Company d/b/a CSC Lawyers Incorporating Service, at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833.

IV. uCool's Unlawful Conduct

10. As set forth above, Lilith originally developed Sword and Tower, and its content is protected by valid copyrights owned by Lilith. In particular, Lilith owns the copyrights in, and has Chinese copyright registrations for, the artistic design and expression of more than 102 characters

1 displayed in Sword and Tower. Lilith further owns the copyrights in the pictorial and graphic works
2 in the screen images and user interfaces, holding Chinese copyright registrations on the look and feel
3 and user interfaces expressed in the game, as well as the copyrights in, and Chinese registrations for
4 the copyrights in Sword and Tower's computer software.

5 11. Lilith released Sword and Tower in China in February 2014, and it quickly became
6 one of the most popular mobile games in China. As a result of that success, Lilith began making
7 plans to release Sword and Tower in numerous other countries including those located in North
8 America.

9 12. Before Lilith could implement those plans for further distribution, in August 2014,
10 uCool, after having access to Lilith's copyrighted works embodied in Sword and Tower, released a
11 game in the United States called Heroes Charge. Upon review of that game, it was clear that uCool,
12 without authorization, copied every aspect of Sword and Tower. In particular, uCool unlawfully
13 copied the artistic design and expression of the characters from the Sword and Tower game that are
14 protected by registered copyrights owned by Lilith. uCool also copied Lilith's copyright registered
15 computer software, Lilith's copyrighted pictorial and graphic works in the look and feel expressed in
16 screen images, and Lilith's copyrighted user interfaces expressed in Sword and Tower. uCool's
17 unlawful copying of Lilith's copyrighted works is so pervasive it can only be described as
18 intentional.

19 13. When Lilith became aware of uCool's copyright infringement, Lilith immediately
20 sent uCool's counsel a letter demanding that uCool cease and desist its unlawful and infringing
21 activity. While the parties continued to exchange correspondence over a period of several months,
22 uCool has refused to cease its conduct, and continues to infringe upon Lilith's intellectual property
23 rights. uCool's infringing conduct has, among other things, caused damage to Lilith's reputation and
24 good will. For example, as Lilith has now begun to release Sword and Tower in other countries,
25 Lilith has received comments from users who are under the impression that Lilith has copied
26 uCool's Heroes Charge. In fact, it is the other way around. Thus, in addition to any monetary
27 compensation to which Lilith is entitled to for past infringement, Lilith has and will continue to
28 suffer irreparable harm unless uCool is enjoined from future infringement.

FIRST CLAIM FOR RELIEF**(Copyright Infringement)**

14. Lilith repeats and expressly incorporates each allegation contained in paragraphs 1 through 13 as though fully set forth herein.

15. As alleged above, Lilith owns valid copyrights and Chinese copyright registrations covering the design and expression of characters, the look and feel expressed in screen images, the expressed user interfaces, and the computer software embodied in Sword and Tower. Lilith released Sword and Tower in China in February 2014, and uCool had access to Lilith's copyrighted works by at least that time. After gaining access to Lilith's copyrighted works, uCool, through its game Heroes Charge, unlawfully and without authorization copied and benefited from Lilith's copyrighted works that are embodied in Sword and Tower.

16. Sword and Tower is not a United States work as defined in 17 U.S.C. § 101. However, China and the United States are both signatories to the Berne Convention. Pursuant to the Berne Convention, Lilith is entitled to bring a copyright infringement action in the United States to protect its interests. *See* 17 U.S.C. § 104.

17. Lilith has and continues to suffer direct and actual damages while uCool reaped profits as a result of uCool's copyright infringement. The full extent of such damages, including uCool's profits, will be determined following an accounting by uCool pursuant to 17 U.S.C. § 504.

18. In addition, Lilith has no other adequate remedy at law and has and continues to suffer irreparable harm and damage as a result of uCool's copyright infringement. Accordingly, Lilith seeks injunctive relief pursuant to 17 U.S.C. § 502 and seizure of unauthorized copies of Lilith's computer software and copyright protected works, including means of production as provided by 17 U.S.C. § 503.

19. By virtue of uCool's refusal to cease and desist its infringing activity, Lilith has been required to bring this lawsuit and, in the process, has and will continue to incur attorneys' fees and costs in connection with the prosecution of this action. Accordingly, Lilith is entitled to recover its fees and costs from uCool pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Lilith respectfully requests that the Court order:

1) that uCool be preliminarily and permanently enjoined from directly or indirectly infringing in any manner Lilith's copyright protected works embodied in Sword and Tower, including, but not limited to, reproduction, manufacture, importation, distribution, advertising, selling and/or offering for sale the game titled Heroes Charge, or any other game, merchandise, or other articles which infringes upon Lilith's copyrights;

2) that Lilith be entitled to seize any unauthorized copies of Lilith's copyrighted works embodied in Sword and Tower, regardless of the form in which those copies currently exist, as well as the equipment used by uCool to create such unauthorized copies;

3) that uCool account for and pay to Lilith all damages sustained by Lilith and profits realized by uCool as a result of uCool's copyright infringement;

4) that uCool be required to pay all reasonable attorneys fees and costs incurred by Lilith as a result of bringing this lawsuit; and

5) that Lilith be awarded all other and further relief to which it is entitled.

Dated: March 18, 2015

Respectfully submitted,

BAKER & McKENZIE LLP
Colin H. Murray
Teresa H. Michaud

By: /s/ Colin H. Murray
Colin H. Murray
Attorneys for Plaintiff
Lilith Games (Shanghai) Co. Ltd.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a jury trial in this matter.

Dated: March 18, 2015

BAKER & McKENZIE LLP
Colin H. Murray
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By: /s/ Colin H. Murray
Colin H. Murray
Attorneys for Plaintiff
Lilith Games (Shanghai) Co. Ltd.